

The University of Chicago

THE STRUCTURE OF A COPTIC
DONATION CONTRACT

A PART OF A DISSERTATION SUBMITTED TO
THE FACULTY OF THE DIVISION OF THE
HUMANITIES IN CANDIDACY FOR THE
DEGREE OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF ORIENTAL LANGUAGES AND LITERATURES

1940

By
ISRAEL HORWITZ

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Chapter II bears the same title as the dissertation submitted to the Faculty of the Division of the Humanities, the University of Chicago (Department of Oriental Languages and Literatures) in candidacy for the degree of Doctor of Philosophy. The dissertation is an analysis of Crum and Steindorff, Koptische Rechtsurkunden des achten Jahrhunderts aus Djême (Leipzig, 1912), Nos. 78-114.

CHAPTER II

THE STRUCTURE OF A DONATION CONTRACT

A thorough analysis of our documents reveals the following structure¹ common to all of them.

A. An introduction consisting of:

- 1) The invocation, found at the head of nearly every contract. The invocations vary in language and script.
- 2) The date, immediately following the invocation. The day of the month and the indiction are given, and in some documents the era such as the Diocletianic or the Saracenic is mentioned.

B. The body of the contract, consisting of:

- 1) The donor's identification. The donor's name and his place of residence are given. There also appears the name of his father, the city or village in which he resides, and the province or nome. Where children are donated, sometimes both parents are given as the donors, while in many instances only one, either the father or the mother, is mentioned. In property contracts we sometimes find one or several individuals appearing as donors and occasionally even a whole community.
- 2) The declaration of the donor to the representative of the monastery. This specifies the technical manner in which the document is being drawn up.
- 3) A reflection justifying the deed. The donor expresses the opinion that according to the laws of the king and of God every man is permitted and encouraged to do what he wishes with his own, the more so if it be an act of piety.

¹For the structure of the Coptic contracts from Jeme see also: "Kinderschenkungen an Koptische Klöster," Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, kanonistische Abteilung, XLII (1921), 385. A. Schiller, Ten Coptic Legal Texts (New York, 1932), p. 8. C. W. Goodwin, "Curiosities of Law," Law Magazine, 1859, p. 238.

- 4) The motivation for the donation. The donor relates the circumstance which has influenced him to take this step. It may be either gratitude for the saint's mediation during an illness or the fulfillment of a vow made at the birth of a child. In some cases the donor states that his act was motivated by a desire for his soul's salvation. In property contracts, "salvation of the soul" is the main motive found.
 - 5) The assurance of the donor that his gift is made under no compulsion and without any thought of later regret, that it is made of his own free will and with the most perfect understanding of the act of donation.
 - 6) The actual donation. The donation is made to the superior of the monastery and his successors. The donor of a child may list in detail the duties the child is to perform at the monastery. In some cases the obligations of the monastery to the child are also enumerated. In property donations only the rights of the monastery over the property donated are given.
 - 7) The clause against violation. The donor obligates himself, his heirs or representatives, the residents of his town, or "any man in general," to guard the sanctity of the deed. In several cases this clause is accompanied by an oath.
 - 8) The curse. A curse follows as an apodosis to the conditional clause, "if any man shall dare to violate the vow." It threatens the violator with punishment in the world to come, with the revenge of the saint, and with excommunication from the Christian community. In many instances a fine is exacted and even corporal punishment administered by the ruling authorities; recognition of the vow by the violator is demanded in such cases. The ruling authorities are called upon to enforce the fulfillment of the vow.
- C. The final declaration of the donor and his signature. The donor states that for the security of the monastery and its representatives he confirms the deed and draws it up with the aid of a notary and witnesses. The donor, having witnessed the entire procedure and noted all that has been written down, finds it pleasing to him and executes it in conformity with the laws. In many cases the donor also adds his signature, or if he is illiterate, as is often the case, has someone else sign for him.

D. Testimony:

- 1) The witnesses. The signatures of the witnesses follow the signature of the donor. The witnesses vary in number. In many cases a witness is unable to sign, and has some other person sign for him. Each signature is preceded and followed by the sign of the cross. The witnesses are supplied by the donor and are mostly of his own status.
- 2) The signature of the scribe. Usually this is lacking.

This in general is the structure of the contracts, with the documents differing among themselves in the following details. The manner of invocation and the way of writing the date are not always the same. The different types of donors have already been mentioned. The motives of the deed and the circumstances that led up to it also vary. The clauses vary in wording and phraseology,² and their order is not always as we have outlined it. Some are absent entirely from many contracts.³ The scribes in our contracts also differ. Only in a few instances does the same scribe write several contracts, and in most of the contracts the signature of the scribe is lacking entirely.

The contracts for donations of persons (children) practically without exception name a boy as the person donated. We have only one case where two boys are being donated (KRU No. 99); and one case where a man dedicates himself (KRU No. 104). The property donations of the contracts consist of various objects: movable, such as utensils, sheep, or goats; and immovable, as a church, or house, or plot of ground or palm trees.

These contracts, like most of the contracts from Jeme, resemble⁴ the Byzantine contracts in form and structure. This similarity extends also to the internal parts of the documents and their clauses, so that many of them remain untranslatable even in

²E. Seidl, "Der Eid im Römisch-Ägyptischen Provinzialrecht," Part II, Münchener Beiträge zur Papyrusforschung, Heft 24, p. 139.

³This would indicate that they were not necessary for the validity of the deed. See A. Schiller, "Coptic Law," Juridical Review, XLIII (1931), 216, note 1.

⁴For this statement see also P. Koschaker, Sav. Z. Rom. Abt., XLI (1920), 330; E. Springer, "Die Sicherungsklauseln d. Koptischen Rechturkunden," Zeitschrift für ägyptische Sprache und Altertumskunde, XXIII (1885), 132.

Coptic and continue their form in Greek long after the Byzantine rule ceased. In fact, even the script⁵ of those parts of the Coptic contracts which are still written in Greek imitates that current in the Byzantine contracts⁶ at the time. In addition we find in the Coptic contracts various figures of speech which were used in Byzantine legal procedures and retained in the Greek language, such as idiomatic phrases, many abbreviations, several signs and technical terms, to say nothing of the Greek vocabulary which formed a part of the Coptic tongue in general even previous to the writing of contracts in Coptic. We likewise find various administrative terms which indicate a partial preservation of the Byzantine political order. Above all we find various elements of law which suggest immediately the Byzantine code of laws,⁷ namely, that of Justinian, which was enforced in Egypt in the year A.D. 528.⁸ However, in many instances we find a divergence from the regular order in our contracts, and especially an arbitrariness in spelling, which is accounted for by the following facts: Greek was no longer a dominating spoken language, although it was retained partly for conservative reasons and partly through the influence of the church,⁹ as was Latin in Western Europe; most of the notaries in our contracts were not official scribes schooled¹⁰ for their duty; the notaries continued the Byzantine law only as a matter of tradition without consulting it in the original. We find instead in the Coptic contracts signs which point to the

⁵See A. Steinwenter, "Koptische Urkundenlehre," Münchener Beiträge zur Papyrusforschung, 1933, 19 Heft, p. 305.

⁶Ibid., p. 306.

⁷A. Steinwenter in "Studien zu den koptischen Rechtsurkunden," Studien zu Palaeographie und Papyrusurkunde, Heft 19, assumes that wherever *νομος* occurs in our contracts it refers to the Justinian code of laws but see P. Koschaker, Sav. Z., 1920, Rom. Abt., XLI, 331, who disagrees decidedly on this point.

⁸See E. Springer, "Die Sicherungsklauseln d. Koptischen Rechtsurkunden," A.Z., XXIII (1885), 134.

⁹W. E. Crum and H. E. Winlock, The Monastery of Epiphanius at Thebes (New York, 1926), pp. 254, 255, 256.

¹⁰See A. Steinwenter, "Koptische Urkundenlehre," Münchener Beiträge zur Papyrusforschung, 1935, Heft 19, p. 305.

great authority vested in the church¹¹ after the Arabic conquest.¹² The church as it is reflected in our contracts not only exerts its influence through an appeal to the religious conscience,¹³ but also assumes the right to punish and excommunicate, and the priests are entrusted with the writing of the documents and their preservation.

Remark

I used throughout the work the term "donation contract," which is not strictly legal. The term "donation deed" would be more appropriate since the donors mention in the documents only the procedure on their own part and none of them state the procedure on the part of the donee.

¹¹ See E. Springer, "Sicherungsklausel in d. Koptischen Rechtsurkunden," A.Z., XXIII (1885), 134.

¹² Coptic legal contracts begin in the Byzantine period. "Der Eid," p. 137

¹³ Religious measures, such as excommunication, for the enforcement of a contract were taken especially under the Arabic authorities. See on that L. Stern, "Zwei koptische Urkunden aus Theben," A.Z., XXIII (1885), 141.



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